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In re Application of
Yong Tuck Lee
Application No. 10/039,795
Filed: October 19, 2001
For: FAMILY TREE WEBSITE ARCHITECTURE

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is a decision on the Petition for Withdrawal of Abandonment pursuant to 37 C.F.R. § 1.181(a), filed August 29, 2005. No fee is required.

This application was held as abandoned for failure to timely respond to the final Office action mailed on December 27, 2004. A Notice of Abandonment was mailed July 27, 2005.

Petitioner alleges that the final Office action was not received. To support the assertion, Petitioner includes a date-stamped post card receipt from the Office which itemizes, among other items, a power of attorney and change of correspondence address request. In addition, Petitioner includes a copy of the Office action which contained a previous mailing address.

The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the Practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received", 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

Petitioner has not fully complied with the requirements set forth above.

However, a review of the application record reveals that the power of attorney and change of address request was received in the Office on August 13, 2004 and matched with the application file, prior to the mailing of the final Office action of December 27, 2004. However, it does not appear as though the change of address request was appropriately processed given that the final Office action and the Notice of Abandonment were mailed to the previous address of record.

Given the fact that there was a request for correspondence address change prior to the mailing of the final Office action and prior to the mailing of the Notice of Abandonment, there was an obvious irregularity in the mailing of the Office communication.

Thus, the application was not abandoned in fact. Accordingly, the holding of abandonment is withdrawn.

The petition is **GRANTED.**

Given the original mailing date of the final Office action, the application will be returned to the examiner for updates as appropriate and generation of a new Office action. From there, the application will be forwarded to the Technology Center's technical support staff for entry of the change of address and mailing the new Office action.



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